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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE SECRETARY OF THE COMMONWEALTH

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Department of State

Commonwealth of Pennsylvania,
Bureau of Corporations and
Charitable Organizations

v.

Phantoms Charities
Respondent

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File No. 17-98-03317

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, Bureau of Corporations and Charitable Organizations ("Bureau"), by and through its undersigned prosecuting attorney, Michael J. Gennett and Phantoms Charities ("Respondent"), stipulate as follows in settlement of the above-captioned matter:

JURISDICTION

1. This matter is before the Secretary of the Commonwealth ("Secretary") pursuant to the Solicitation of Funds for Charitable Purposes Act, Act of December 19, 1990, P.L. 1200, No. 202, *as amended* ("Act"), 10 P.S. §§ 162.1 *et. seq.*

2. At all relevant and material times, Respondent acted as a charitable organization as defined by the Act.

STIPULATED FACTS

3. Respondent's last known address on file with the Bureau is 701 Hamilton Street, Allentown, PA 18101.

4. On or about September 21, 2016, Respondent became registered as a charitable organization with the Department of State, Bureau of Corporations and Charitable Organizations (Bureau) and holds certificate number 105352 issued by the Bureau.

5. Respondent is a charitable organization that collaborates on certain programs with the Lehigh Valley Phantoms ("Phantoms Hockey"), a professional ice hockey team and member of the American Hockey League.

6. Respondent was unregistered from October 4, 2014 through September 21, 2016 and from May 16, 2017 through December 14, 2017, while soliciting contributions and conducting fundraising events.

7. During these unregistered periods, Respondent received gross annual contributions of approximately \$736,471.00 and conducted at least eleven (11) fundraising events.

8. Respondent was not exempt from registration under 10 P.S. § 162.6(a)(8) since Respondent received contributions in excess of \$25,000.00 per annum.

9. Respondent admits to numerous transfers of funds between Respondent and the Phantoms Hockey bank accounts, specifically, funds identified as charitable contributions had been deposited into the Phantoms Hockey account and either held there for several months before being transferred to Respondent, or not transferred at all due to a netting of expenses paid and revenues collected.

10. Respondent admits that funds from the Phantoms Hockey bank account were used to pay charity-related expenses and that transfers between the two accounts represented reconciliations of the hockey team account paying charity expenses and seeking reimbursement from the charity, and the hockey team holding charitable contributions and payments tendered in

the form of credit card payments or wire transfers and later directing those contributions, minus expenses, to the charity.

11. Respondent admits that it cannot locate copies of four (4) of Respondent's credit card purchase receipts totaling approximately \$3,261 for purchases made in 2016 when requested by the Department of State's Bureau of Enforcement and Investigation, which is within the three (3) years after the end of the period of registration to which they relate.

12. Respondent engaged in the practice of utilizing the Phantoms hockey team bank account to pay charity-related expenses and held charitable contributions and payments made in the form of credit card payments and wire transfers, until such time as those were transferred in full to Phantoms Charities.

13. These deposits were later reconciled through the transfers of funds for the net differences between the hockey team and Respondent's bank accounts.

14. As a result of this practice, bank statements provided to the Bureau of Corporations and Charitable Organizations by Respondent, and made available for public inspection, do not provide an accurate picture of the charitable expenses and contributions since an undetermined number of contributions and expenses were not processed directly through the Respondent's bank account.

15. On or about November 8, 2017, Respondent's website contained the disclosure statement required under Section 13(c) of the Act, indicating that the organization was properly registered as a charitable organization.

16. Respondent was not properly registered during the period of May 16, 2017 through December 14, 2017.

AGREED VIOLATIONS

17. Respondent admits and agrees that by engaging in the aforementioned activities, Respondent committed violations of the Act as follows:

a. Violating Section 15(a)(1) of the Act, 10 P.S. § 162.5(a)(1), by and through 10 P.S. § 162.5(a), by soliciting contributions without the approved registration filed with the Bureau.

b. Violating Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), by and through 10 P.S. § 162.5(s), by failing to maintain and administer all contributions raised on its behalf through an account in the name of the charitable organization and under its sole control.

c. Violating Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), by and through 10 P.S. § 162.5(o), by failing to maintain records, books and reports for at least three (3) years after the end of the period of registration to which they relate.

d. Violating Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), by and through 10 P.S. § 162.12 by failing to keep true fiscal records as to the activities in this Commonwealth as may be covered under this act.

e. Violating Section 15(a)(2) of the Act, 10 P.S. § 162.15(a)(2), by utilizing any unfair or deceptive acts or practices or engaging in any fraudulent conduct which creates the likelihood of confusion or misunderstanding.

PROPOSED ORDER

18. The participants, intending to be legally bound, consent to issuance of the following Order in settlement of this matter:

a. Respondent violated Section 15(a)(1) of the Act, 10 P.S. § 162.5(a)(1), by and through 10 P.S. § 162.5(a), by soliciting contributions without the approved registration filed with the Bureau.

b. Respondent violated Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), by and through 10 P.S. § 162.5(s), by failing to maintain and administer all contributions raised on its behalf through an account in the name of the charitable organization and under its sole control.

c. Respondent violated Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), by and through 10 P.S. § 162.5(o), by failing to maintain records, books and reports for at least three (3) years after the end of the period of registration to which they relate.

d. Respondent violated Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), by and through 10 P.S. § 162.12 by failing to keep true fiscal records as to the activities in this Commonwealth as may be covered under this act.

e. Respondent violated Section 15(a)(2) of the Act, 10 P.S. § 162.15(a)(2), by utilizing any unfair or deceptive acts or practices or engaging in any fraudulent conduct which creates the likelihood of confusion or misunderstanding.

ADMINISTRATIVE PENALTIES

19. An **ADMINISTRATIVE FINE** of **Nine Thousand Dollars (\$9,000.00)** is levied upon Respondent. Respondent shall tender the full sum of **Nine Thousand Dollars (\$9,000.00)**, with this executed Consent Agreement.

a. Payment shall be by certified check, cashier's check, attorney's check, or U.S. Postal money order.

b. The instrument of payment shall be **made payable to the "Commonwealth of Pennsylvania,"** and shall be valid for a period of at least one hundred eighty (180) days.

c. Respondent agrees that payment will be made by one of the methods indicated in subparagraph (a) above and that payment by uncertified personal check, corporate check or cash will not be accepted.

CASE SETTLED AND DISCONTINUED

20. This case shall be deemed settled and discontinued upon the Secretary issuing an Order adopting this Consent Agreement and the Respondent's successful completion of the requirements of this Order. However, nothing in this Consent Agreement and Order shall preclude the Prosecuting Attorney for the Bureau from filing charges or the Secretary from imposing disciplinary or corrective measures for violations or facts not contained in this Consent Agreement and Order.

ACKNOWLEDGEMENT OF NOTICE AND WAIVER OF HEARING

21. Respondent waives the filing of an Order to Show Cause in this matter. Respondent knowingly and voluntarily waives the right to an administrative hearing in this matter, and to the following rights related to the hearing: to be represented by counsel at the hearing; to present

witnesses and testimony in defense or in mitigation of any sanction that may be imposed for a violation; to cross-examine witnesses and to challenge evidence presented by the Bureau; to present legal arguments by means of a brief; and to take an appeal from any final adverse decision.

AGREEMENT NOT BINDING ON OTHER PARTIES

22. This Consent Agreement is between the Bureau and Respondent only. It does not bind any other administrative or governmental entity of the Commonwealth of Pennsylvania, including any other bureau within the Department of State. Except as otherwise noted, this Agreement is to have no legal effect if (a) the Office of General Counsel expresses an objection to the Agreement's form or legality and/or (b) unless and until the Secretary issues the stipulated Order.

EFFECT OF SECRETARY'S REJECTION

24. Should the Secretary not approve this Consent Agreement, presentation to and consideration of this Consent Agreement and other documents and matters by the Secretary shall not prejudice the Secretary from further participation in the adjudication of this matter. This paragraph is binding on the participants even if the Secretary does not approve this Consent Agreement.

ENTIRE AGREEMENT

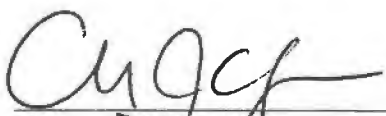
25. This Agreement contains the whole agreement between the parties; provided, however, that the captions printed in the various provisions of this agreement are for ease of reading only and are not to be interpreted as forming any part of this agreement. There are no other terms, obligations, covenants, representations, statements or conditions, or otherwise, of any kind whatsoever, concerning this Agreement.

AGREEMENT DOES NOT PREVENT REFERRAL TO OTHER AGENCIES

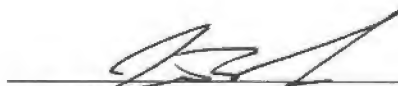
26. The parties acknowledge that other federal, state, and/or local agencies may have jurisdiction over the activities of, or representations made by, Respondent and its officers, directors, agents, employees or independent contractors. Nothing in this Consent Agreement or the Order based upon this Consent Agreement shall preclude representatives of the Bureau from referring any information or data produced as a result of this matter to any federal, state, or local agency or governmental unit having jurisdiction over the activities of Respondent or any officer, director, agent, employee or independent contractor of the Respondent.

VERIFICATION OF FACTS AND STATEMENTS

27. Respondent verifies that the facts and statements set forth in this Agreement are true and correct to the best of Respondent's knowledge, information and belief. Respondent understands that statements in this Agreement are made subject to the criminal penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



Michael J. Gennett
Prosecuting Attorney
Department of State



Phantom's Charities
Respondent

By: James Brooks
Print

Title: Vice President
Print

DATED: 15 AUG, 2015

DATED: 8/13/18



**IN THE MATTER OF
Phantoms Charities
File No.: 17-98-03317**

ORDER

AND NOW, this 27th day of August 2018, the foregoing Consent Agreement is hereby approved and the terms set forth herein are hereby adopted and incorporated herein as the Order of the Acting Secretary of the Commonwealth, now issued in resolution of this matter.

THIS ORDER shall take effect immediately.

BY ORDER:

A handwritten signature in cursive script, reading "Robert Torres", written over a horizontal line.

**Robert Torres
Acting Secretary of the Commonwealth**

For the Commonwealth:

Michael J. Gennett
Prosecuting Attorney
306 North Office Building
401 North Street
Harrisburg, PA 17120

For Respondent:

Marie K. McConnell, Esquire
Shareholder
Fitzpatrick, Lentz and Bubba, P.C.
4001 Schoolhouse Lane
Center Valley, PA 18034
Attorney for Respondent